

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.23116, 23147, 23152 and 24180 of 1998

Dated: 14-11-2007

Between:

Smt. Srirangam Swarna Lakshmi and others.

..... PETITIONERS

AND

The District Collector, Chittoor District, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.23116, 23147, 23152 and 24180 of 1998

COMMON ORDER:

In all these writ petitions the Award No.1 of 1998 dated 10.06.1998 passed by the Special Deputy Collector (Land Acquisition), second respondent herein, under Section 12(1) of the Land Acquisition Act, 1894 (the Act, for brevity) read with Section 18 of the Andhra Pradesh Urban Areas (Development) Act, 1975 (the Urban Act, for brevity) is assailed as illegal and violative of Articles 14 and 300-A of the Constitution of India. It is, therefore, expedient to dispose of all the matters by a common order. The petitioners in all these writ petitions are owners of various extents of land in T.S.No.1508 situated at Bheemunipatnam, Visakhapatnam District. The Visakhapatnam Urban Development Authority (VUDA), third respondent herein, proposed to acquire land for public purpose namely for 'sites and services'. In 1984, in the first instance acquisition proceedings under the Act were initiated but for some reason or the other, the proceedings were dropped. Again the proceedings were initiated and a notification under Section 4(1) of the Act was published on 06.05.1995 proposing to acquire an extent of Acs.7.17 cents in T.S.No.1508. The petitioners claim that they are the owners of the land. The petitioners allege that enquiry under Section 5-A of the Act was not conducted after issuing notice to the petitioners and that the notices under Sections 9(1) and 9(3) of the Act were not issued at the time of conducting award enquiry and the award was passed on 10.06.1998. They contend that the award passed by second respondent without complying with the mandatory provisions of the Act is void and nullity. Therefore, they seek invalidation of the award and for consequential order to set aside the same.

Respondent Nos.2 and 3 filed counter-affidavits. A reading of the same would show the following events.

- (i) The notification under Section 4(1) of the Act was published in Andhra Pradesh Gazette Issue No.12 dated 06.05.1995 and it was published in two local daily newspapers namely 'Eenadu' on 26.05.1995 and 'Janatha' on 27.05.1995.
- (ii) The notification under Section 4(1) of the Act was published in the locality on 13.06.1995.
- (iii) The notice of enquiry under Section 5-A of the Act requiring the notified persons to attend the enquiry on 24.08.1995 at 10.30 a.m. was served and the same was

also published on the notice board at the office of second respondent.

- (iv) M/s T.Purushotham Sudarshana Rao, Smt.Y.Saroja and Smt. D.Seetha Mahalakshmi sent a representation seeking time to file their objections.
- (v) M/s Smt.Nammi Kondamma, Nammi Appalanaidu and Sri Dandu Devi Rao attended the enquiry under Section 5-A of the Act on 24.08.1995 and submitted their written objections.
- (vi) The objections received were submitted to VUDA vide letter of second respondent dated 26.03.1996.
- (vii) The objections were overruled by VUDA by letter dated 18.05.1996.
- (viii) The other persons shown in the notification under Section 4(1) of the Act did not attend the enquiry under Section 5-A of the Act.
- (ix) The District Collector approved the declaration under Section 6 of the Act on 01.06.1996 and the same was published in the Andhra Pradesh Gazette Issue No.9 dated 11.06.1996.
- (x) The substance of declaration was published in newspapers - 'Eenadu' on 29.06.1996 and 'Janatha' on 30.06.1996 duly declaring the names of the persons interested and the area of the land.
- (xi) The statutory notices under Sections 9(1), 9(3) and 10 of the Act were served, vide letter dated 20.08.1996 issued by second respondent.
- (xii) All the persons were asked to appear for award enquiry on 12.09.1996.
- (xiii) Notices under Sections 9(1) and 10 were published by affixture of the same to the notice board at the office of second respondent, Collector's office, MRO's office, Police Station and Registration office of Bheemunipatnam. The notice was also announced by beating of tom-tom in the locality.
- (xiv) The award enquiry was conducted on 12.09.1996 to 05.10.1996 and again on 26.12.1996.
- (xv) As many as seven persons attended the award enquiry and submitted representations.
- (xvi) After considering the representation, Award No.1 of 1998 dated 10.06.1998 was passed awarding a sum of Rs.38,65,108.65ps. The amount was deposited in the civil Court deposit under Sections 30 and 31(2) of the Act by cheque dated 16.07.1998.

(xvii) The notice of award under Section 12(2) of the Act was approved on 10.06.1998 and was served directly on the persons mentioned in the award.

In W.P.Nos.23147 and 24180 of 1998 the petitioners have filed reply-affidavits. Adverting to the question of issue of notices under Sections 5-A, 9(1), 9(3) and 10 of the Act, a statement of demur has been made, but no attempt is made to prove the non-service of notice.

The learned counsel for the petitioners made three submissions. First, the acquisition and the consequential impugned award is contrary to the instructions/guidelines issued by the Government vide their orders in G.O.Ms.No.911 dated 09.11.1987 and therefore, the award is void. Secondly, for want of notices at the stage of enquiry under Section 5-A of the Act and at the stage of passing of award under Sections 9(1), 9(3) and 10 of the Act, the award is illegal and against the principles of natural justice besides in contravention of the mandatory requires of law. Thirdly, though the notification under Section 4(1) of the Act was published on 06.05.1995, the declaration was published in the Andhra Pradesh Gazette on 11.06.1996 without making publication in the locality.

This Court has been taken through the Government Order, being G.O.Ms.No.911 dated 09.11.1987. In the matter of acquisition of land for establishment of satellite townships by the urban development authorities like VUDA, the Government issued the following instructions.

1) The Urban Development Authorities may not acquire private lands for implementing sites and services programmes and these programmes may be convened as far as possible to the areas covered by the Government lands.

2) However the Urban Development Authorities are advised that they may acquire private lands in the areas covered by the satellite townships for the purpose of the formation of arial sub-roads, other major roads including sector across roads, development of control parks, play-grounds, educational institutions, provision of water and electric supply and other infrastructures facilities and amenities that are to be provided for the promotion of the townships as a whole.

3) While considering the proposals for deletion from Land Acquisition of the lands already notified, case be taken for not deleting the lands required for the purposes as indicated above.

4) The acquisition of lands which have reached the advanced stage in the process of acquisition under the Land Acquisition Act, 1091 (I.O.) stage of passing award) may not be deleted from acquisition.

5) While resorting to acquisition of lands required for public purposes, in order to save time and also possible litigation with regard to quantum of compensation etc., the Urban Development Authorities may resort to the procedure to acquire through private negotiations as per the guidelines already indicated in the G.O.Ms.No.25, M.A., dated 21.01.1987.

A perusal of the above instructions do not even remotely suggest that there is any bar much less legal bar or prohibition for acquiring the private land. If the said G.O. is interpreted as rendering acquisition of private land void, as urged by the learned counsel for the petitioners, it would certainly violate Section 18(1) of the Urban Act which provides that it shall be open to the Government to acquire land for the purpose of development for any other purpose under the said Act. Secondly this Court has its own doubts whether the said G.O. applies when the land is acquired for 'sites and services'. There cannot be any dispute that G.O.Ms.No.911 dated 09.11.1987 lays down guidelines only in the matter of acquisition of land for establishment of satellite townships. There is not even a whisper that the petitioners' land is acquired for satellite townships. Be it noted establishment of satellite townships is altogether a different concept from acquisition of land for 'sites and services'.

The submission that there was no notice at the stage of enquiry under Section 5-A of the Act or before conducting award enquiry under Sections 9(1), 9(3) and 10 of the Act also cannot be countenanced. A categorical averment in that aspect is made in the counter-affidavits with details of issue of notices to the persons interested/shown in the notification under Section 4(1) of the Act and also the persons who appeared before second respondent at the time of enquiry under Section 5-A of the Act. Similarly details are furnished with regard to service of notices under Sections 9(1), 9(3) and 10 of the Act. In this context, the submission of the learned counsel for the petitioners that when the land was acquired in 1984, no notice was issued to the petitioners and nothing could have prevented second respondent to issue notice cannot be accepted. Be it noted the service of notice under Section 9(3) of the Act at the relevant place by the Collector is sufficient compliance of service of notice under Section 9(1) of the Act. Secondly if the name of the person is not shown in the notification under Section 4(1) of the Act and by such reason the notice could not be served, the same does not vitiate the land acquisition proceedings. The counter averments clearly establish that at the stage of notification under Section 4(1) of the Act as well as declaration under Section 6 of the Act, notices were published in local newspapers as well as by displaying the same on the notice boards at the appropriate places. This aspect of the matter is not clearly denied in the reply affidavits.

It is now well settled that when an award is passed, notification under Section 4(1) of the Act or declaration under Section 6 of the Act cannot be challenged in a writ petition. This is a settlement proposition of law. In **Municipal Council, Ahmednagar v. Shah Hyder Beig**^[1], the

Supreme Court reiterated the law. It is apposite to excerpt paras 17 and 18.

17. In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of recent cases (*C. Padma v. Dy. Secretary to the Govt. of T. N.*, reported in (1997) 2 SCC 627. This Court observed as below :-

"The admitted position is that pursuant to the notification published under S. 4(1) of the Land Acquisition Act, 1894 (for short "the Act") in GOR No. 1392 Industries, dated 17-10-1962, total extent of 6 acres 41 cents of land in Madhavaram village, Saidapet Taluk, Chengalpatta District in Tamil Nadu was acquired under Chapter VII of the Act for the manufacture of Synthetic Rasiua by Tvl. Reichold Chemicals India Ltd., Madras. The acquisition proceedings had become final and possession of the land was taken on 30-4-1964. Pursuant to the agreement executed by the company, it was handed over to Tvl. Simpson and General Finance Co. which is a subsidiary of Reichold Chemicals India Ltd. It would appear that at a request made by the said company, 66 cents of land out of one acre 37 cents in respect of which the appellants originally had ownership, was transferred in G.O.Ms. No. 816 Industries, dated 24-3-1971 in favour of another subsidiary company, Shri Rama Vilas Service Ltd., the 5th respondent which is also another subsidiary of the company had requested for two acres 75 cents of land; the same came to be assigned on leasehold basis by the Government after resumption in terms of the agreement in G.O.Ms. No. 439 Industries, dated 10-5-1985. In G.O.Ms.No. 546 Industries, dated 30-3-1986, the same came to be approved of. Then the appellants challenged the original G.O.Ms. No. 1392 Industries, dated 17-10-1962 contending that since the original purpose for which the land was acquired had ceased to be in operation, the appellants are entitled to restitution of the possession taken from them. The learned single Judge and the Division Bench have held that the acquired land having already vested in the State, after receipt of compensation by the predecessor-in-title of the appellants, they have no right to challenge the notification. Thus the writ petition and the writ appeal came to be dismissed.

18. Similar is the view in an earlier decision of this Court in the case of *Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. Pvt. Ltd.*, reported in (1996) 11 SCC 501 : (1996 AIR SCW 3871 : AIR 1997 SC 482). Incidentally, the decision last noted was also on the land acquisition and requisition under the Maharashtra Regional and Town Planning Act, 1966 and in paragraph 29 of the report, this Court observed :

"It is well settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt,

discretionary powers under Art. 226 of the Constitution to quash the notification under S. 4(1) and declaration under S. 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Art. 226. The fact that no third party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned single Judge dismissing the writ petition on the ground of laches.

In the result, for the above reasons, these writ petitions faila and they are accordingly dismissed. No costs.

(V.V.S.RAO, J)

14th November, 2007
ghn

[\[1\]](#) AIR 2000 SC 671